MAY 27 1943
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1942:

No. 1051 72

MINA L. COWAN,

Petitioner,

vs.

FALLBROOK PUBLIC UTILITY DISTRICT, a Public Corporation,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and Brief in Support Thereof.

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FALLBROOK PUBLIC UTILITY DISTRICT, a Public Corporation,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit and Supporting Brief.

To the Honorable Supreme Court of the United States:

Mina L. Cowan respectfully prays that this court consider her petition and that a writ of certiorari issue to review the decision [R. 167] of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above cause on November 20, 1942, reversing a decision of the District Court of the United States in and for the Southern District of California, Central Division; a Petition for Rehearing in said Circuit Court of Appeals was denied on December 31, 1942 [R. 179].

Opinions Below.

The opinion of the Circuit Court of Appeals in and for the Ninth Circuit is reported in 131 Fed. (2d) 513.

Jurisdiction.

The Petition for Rehearing by the Circuit Court, as above stated, was denied on December 31, 1942; no stay of the mandate was applied for or granted; on or about March 23, 1943, an application was made by counsel for your petitioner, requesting an extension of time within which to file this petition; that on March 26, 1943, The Honorable Wm. O. Douglas, Associate Justice of the Supreme Court of the United States, pursuant to said application, and good cause having been shown, extended the time for the filing of said petition to and including May 29, 1943. The jurisdiction of this Honorable Court is invoked under Section 240(a) of the Judicial Code (28 U. S. C. A., Section 347).

Statement of Facts Involved.

Your petitioner, Mina L. Cowan, and her attorney in connection with this petition, Wm. G. Junge, apologize to this Court, and respectfully request the indulgence of this Court in the event that any inaccuracy may appear in this petition or the brief in support thereof, for the reason that the attorney who represented your petitioner throughout the entire proceedings, before the Conciliation Commissioner, the District Court of the United States and the Circuit Court of Appeals for the Ninth Circuit, is no longer

engaged in the practice of law, and therefore, was unable to file this petition. The matter was submitted to your petitioner's present attorney some time after the petition for rehearing in the Circuit Court had been denied, and he, not having taken any part in any of the proceedings up to that time, found it necessary to examine and digest voluminous records, documents, transcripts and briefs in a comparatively short period of time. Misstatements may occur, but they are not intentional.

The facts involved in this matter can probably be best submitted to this Honorable Court by using the same statement which was made by the Circuit Judge [R. 168-171] as follows:

> "The District Court, upon review, affirmed an order of a Conciliation Commissioner-Referee in Bankruptcy, denying the petition of Fallbrook Public Utility District for permission to institute and maintain an action in the State Court against Mina L. Cowan, Debtor, and H. R. Cowan, her husband, to quiet title to certain real property, and to set aside a restraining order theretofore issued against it by the Conciliation Commissioner-Referee, which restrained it from selling or attempting to sell the referred to real property.
>
> "Fallbrook Public Utility District appeals (§§47, 48 Ti. 11, U. S. C. A).
>
> "Fallbrook Public Utility District was a public corporation, organized prior to the year 1933 (Cal. St. 1897, p. 254—Deering General Laws Act 3854, p. 1792), and existed until dissolved in 1938. At or

about the time of its dissolution, according to the terms of an alleged contract, made and entered into by and between it and Fallbrook Public Utility District, a public corporation (Cal. St. 1913, p. 450 and amendments), all of its assets were acquired by the latter.

"We shall refer to Fallbrook Irrigation District as Irrigation District, and Fallbrook Public Utility District as Utility District.

"Mina L. Cowan, herein called Debtor, is the farmer-debtor bankrupt (§203, Ti. 11, U. S. C. A.), and she claims an interest for the bankruptcy estate in certain real property affected by the restraining order within the territorial area formerly embraced in Irrigation District. That Debtor once owned the interest she is now claiming for the bankruptcy estate is undisputed, and it is likewise undisputed that Irrigation District assessments were allowed to go unpaid and that the District took Certificates of Sale for the property because of the delinquency in payment of the assessments.

"Thereafter, in a proceeding in the State Court, instituted by Irrigation District and authorized by the California Irrigation Act, in which notice was served upon all interested parties by publication, the State Court entered a decree, confirming the sale, including the Certificates of Sale. The decree further provided that deeds to the property described in the Certificates of Sale must be issued to Utility District by the County Treasurer of San Diego County, upon demand, provided the redemption period of three years had expired without payment. Payment was not made within such period, and Utility District took deeds in accordance with the decree. These deeds were issued more than four months before Debtor instituted these proceedings.

"Thereafter, and on March 12, 1940, the Secretary of Utility District dispatched a letter[1] to H. Cowan, Debtor's husband, in which it was stated that the Utility Board of Directors had set March 22, 1940, as the date the real property with which we are here concerned would be offered for sale if not redeemed theretofore.

"The property was not redeemed, but on March 20, 1940, eight days after the date of the Secretary's letter and two days before the date therein fixed as the date of the proposed sale, Debtor filed in the Bankruptcy Court under §75(s) Bankruptcy Act (11 U. S. C. A. 3203(s).). On the same day the matter was referred to the Conciliation Commissioner-Referee, who immediately issued the order Utility District desires to have cancelled. A few days later Debtor was declared a bankrupt under an amended petition.

"In addition to this recitation of facts, the Certificate of the Commissioner to the Judge contains findings to the effect that no water was made available to said lands by the Irrigation District. That upon petition of Debtor, the Irrigation District excluded some of the lands in which the Debtor owned an interest, but declined to exclude the property herein in question. That unpaid assessments were put under a ten-

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[1]"On February 20th we sent you a registered letter, in which we set for the various certificate numbers and amounts due on each, of the assessments levied by the Fallbrook Irrigation District and not paid. However, today we receive notice that this letter is being returned unclaimed.

"The total amount due on all parcels and including all certificates, is $1472.08 and the time limit in which to redeem has been set by the Board of Directors as March 22, 1940. Following that date, the property may be sold at public auction or otherwise.

"Trusting that you may be able to redeem your property, we are * * *."

year redemption plan and payment thereunder was made for the year 1936; that the Irrigation District continued to assess the property after issuance of Certificates of Sale; that the Utility District assumed to pay $1,463.00 to Irrigation District for all of its assets of valuable personal property, including sales certificates; that the value of the lands of Debtor is $15,000.00 (appraised at $12,500.00); that Debtor never received notice of Utility's petition for deeds to the San Diego County Treasurer; that the property has not been sold by the County of San Diego, nor the State of California, for delinquent County and State taxes."

Questions Presented.

1. Whether or not the farmer-debtor, the petitioner, on the date of bankruptcy had a property right in the land because of her right to redeem?

2. Should the Circuit Court on appeals determine the question of "absolute ownership" and dismiss the proceedings as to the property, and contrary to state statutes, and before the local State Supreme Court has adjudicated the matter of priorities between the owners of tax titles?

3. Should a Federal Court disregard evidence which might be urged in State Court proceedings involving the validity of assessments and a subsequent sale thereunder?

4. Should the Utility District be permitted to retain as its own, property appraised at $12,500.00, which it obtained through foreclosure of a questionable lien for the sum of $1472.00, which lien it obtained from its predecessor under an agreement to take all of the predecessor's assets, including the land in question for a total consideration of $1463.00?

Reasons for Granting the Writ of Certiorari and Errors Committed by the Circuit Court of Appeals.

I.

The Court below has decided an important question of law conflicting with local State decisions.

(a) The findings of the Conciliation Commissioner as set forth [R. 53] reads as follows:

> "That the said property of the debtor has not been sold by the State of California nor the County of San Diego for the delinquent general county taxes. That the said debtor still has the right to redeem the said property from the County of San Diego and the State of California under the delinquent general taxes.
>
> "That the rights of the debtor to redeem under the delinquent general county taxes still exists, and that such rights are equal to, if not greater than, the rights of the petitioner herein under its alleged tax deeds."

(b) If a tax lien is held by the County of San Diego and an assessment lien is held by the public utility, then, under the laws of the State of California, your petitioner still has a right to redeem and have the matter of priorities determined by a local court. This, for the particular reason that the laws of the State of California have, as yet, not determined the priorities between tax title holders and [R. 141] the State of California as the owner of a tax title deed to said property subject to redemption.

(c) Your petitioner, as a "farmer-debtor" is entitled to redeem and preserve an important property right.

Collins v. Welch, 75 Fed. (2d) 894;
In re Gunder, 88 Fed. (2d) 284;

Kalb v. Feuerstein, U. S. Supreme Ct., Jan. 2, 1940, 116 Fed. (2d) 775;

La Mesa Lemon Grove and Spring Valley Irrigation Dist. v. Hornbeck, 216 Cal. 730.

II.

The lower court has decided an important question in conflict with the weight of authority in that it declared the Utility District to be "absolute owner" of the property, although local decisions do not so rule.

La Mesa Irrigation Dist. v. Hornbeck, 216 Cal. 730 at pages 735 and 738;

Provident Land v. Zumwalt, 12 Cal. (2d) 365;

El Camino Irr. v. El Camino Corp., 12 Cal. (2d) 378;

Clough v. Compton Irrig. Dist., 12 Cal. (2d) 385;

Moody v. Provident Irrig. Dist., 1 Cal. (2d) 389;

Peoples Bank v. Imperial Irrig., 15 Cal. (2d) 397, at 402;

Mangus v. Miller, 317 U. S. 178.

III.

The lower court has decided an important question of Federal law, which has not been, but should be decided by this court; *i. e.*, Is the privilege of redemption after foreclosure of an assessment lien a "Valuable property right in a bankruptcy proceedings"?

IV.

The lower court should have referred the question of tax title ownership to the State Court for decision, and should not have dismissed the proceedings as to the property involved.

ARGUMENT IN SUPPORT OF PETITION.

I.

Whether or Not the "Farmer-Debtor," the Petitioner Herein, on the Date of Bankruptcy Had a "Property Rright" in the Land Because of Her Right to Redeem?

Petitioner unquestionably, at one time, owned the property and the interest she now claims [R. 169], and it is likewise true that the Utility District obtained Certificates of Sale for the property, because of delinquency in payment of assessments [R. 169]. A judgment obtained by the Utility District in the State Court entered a decree confirming the sale, but also provided for a redemption period [R. 169]. Payment was not made in accordance with the decree, but a letter was written by the secretary of the Utility District to your petitioner's husband, which letter your petitioner claims granted an extension of time [R. 170]. Before this claimed extension expired, the bankruptcy proceedings were instituted. The property was also subject to San Diego County taxes, but has not been sold by the County of San Diego nor the State of California for taxes [R. 171].

The property right which we claim was, by the filing of the bankruptcy petition, placed in the jurisdiction of the Federal District Court; *Collins v. Welch*, 75 Fed. (2d) 894; *In re Gunder*, 88 Fed. (2d) 284. The settled policy of the law is to allow a delinquent owner to redeem his property and make his burdens as light as possible.

Thompson v. Clark, 6 Cal. (2d) 285, at 291;

Anglo Cal. Nat. Bk. v. Leland, 9 Cal. (2d) 347, at 352.

It is well established in California that an irrigation district and public utility, such as the Fallbrook Public Utility District involved herein, is an agency of the State, whose functions are considered exclusively governmental; that it owns no land in a proprietary sense, the property being owned by the State and held only for governmental purposes; that the property acquired by the district must be held in trust and dedicated and set apart to the uses set forth in the Act.

Provident Land v. Zumwalt, 12 Cal. (2d) 365;
El Camino Irr. v. El Camino Corp., 12 Cal. (2d) 378;
Clough v. Compton Irrig. Dist., 12 Cal. (2d) 385;
Moody v. Provident Irrig. Dist., 1 Cal. (2d) 389;
Peoples Bank v. Imperial Irrig., 15 Cal. (2d) 397, at 402.

This establishment of a utility district as an agency of the State, and that its property is owned by the State, definitely places the petitioner at bar in the same position as that of the State of California. The Political Code sections pertinent to the right of redemption of a property owner of tax deeded land are therefore controlling. Sections 3780 and 3785a provide for the redemption right by the owner or any party in interest within five years of the date of sale to the State or at any time prior to the public sale of the lands by the State; likewise, section 3817 provides for redemption before the State has disposed of the land by paying to the County Treasurer the amount of taxes and penalties. Sections

3897 and 3897-d are also most significant in this respect; they make provision for the various taxing agencies, such as irrigation and reclamation districts, to file claims with the County Treasurer for a pro-rate payment to them of the amount of their delinquent tax assessments within six months after a public sale has been had of the land by the State and no redemption was made; *there are other provisions in said section 3897-d which indicate that the irrigation districts' rights are subordinate to those of the county general taxes.*

See:

La Mesa Irrigation Dist. v. Hornbeck, 216 Cal. 730, at pages 735 and 738.

There were certain sales of property, theretofore owned by this petitioner, in 1938 and certain additional sales on September 2, 1938. Is it not reasonable to suppose that redemption from these several sales could be made at any time prior to the same date in 1941? Particularly, in view of the fact that we must bear in mind that the bankruptcy proceedings were filed on March 20, 1940.

We, therefore, urge that petitioner has not lost her redemption rights, particularly in so far as the County of San Diego is concerned, which rights are equal to if not greater than any rights existing under the questionable tax deeds held by the Irrigation District. This statement is borne out in substance by the findings of the Conciliation Commissioner [R. 53].

II.

Should the Circuit Court of Appeals Determine the Question of "Absolute Ownership" and Dismiss the Proceedings as to the Property and Contrary to the State Statutes, and Before the Local Supreme Court Has Adjudicated the Matter of Priorities Between the Owners of Tax Titles?

The Circuit Court held in its decision that *"on this date the Utility District became the absolute owner of the property"* [R. 174]. With due respect to the ruling of that court, we are unable to satisfy ourselves as to how such a statement could be arrived at in view of the fact that no quiet title or other suit has as yet determined the rights of the Utility District, either as against your petitioner or the County of San Diego; and in view of the further fact, that since no sale has been made by the County of San Diego for delinquent taxes, certainly the redemption period is still in effect. It must be obvious that the Utility District cannot at present be the "absolute owner," because of the decisions above referred to and since the Supreme Court of this State has never decided priorities between tax lien owners [R. 141, subd. 4]—

> "That the Utility District is the owner of a tax title deed to said property which is held by the State, subject to the right of redemption for the nonpayment of general county and state taxes assessed against said property." [R. 53.]

La Mesa Irrigation Dist. v. Hornbeck, 216 Cal. 730, at pages 735 and 738;

Kuback v. McGuire, 199 Cal. 215;

Inglewood v. County of Los Angeles, 207 Cal. 697;

Mangus v. Miller, 317 U. S. 178 (rehearing denied Jan. 4, 1943).

As stated by Judge Jenney in *In re American Fidelity Corporation,* 28 F. Supp. 462 at 468,

> "* * * it is the very *quintessence* of exclusive jurisdiction for the Federal Court to permit the state court to try a certain issue when it feels that the state court is in a better position to determine the same expeditiously."

If it is true, as we believe, that the District does not have "absolute title," and if it is true that redemption is still possible, in so far as this petitioner is concerned under the San Diego County tax assessment, and possibly under the District levy which ripened into tax deeds, and if it is true that the matter should be referred to the State Court for adjudication prior to a ruling by a Federal Court, *then, should this Honorable Court not review the opinion of the Circuit Court and reverse the same and give petitioner an opportunity to urge her respective defenses in the State tribunal?*

The defenses she would urge are: *First,* that the assessment District levy was fraudulent, improper and illegal [R. 48]. *Second,* that the sale of the property for said alleged illegal assessments was "a shock to the conscience of the court" [R. 51]. Third, that Exhibit "E" introduced by petitioner [R. 77] granted an extension of time to your petitioner within which to pay the delinquent assessments, so that in her bankruptcy proceedings she still retained a valuable property right, because said proceedings were instituted prior to the expiration date referred to in Exhibit "E."

La Mesa Irrigation Dist. v. Hornbeck, 216 Cal. 730, at page 738.

"We can accord no controlling weight to the contention in this connection that petitioners have tax titles which do not permit of redemption by the property owners and for that reason are in a superior position to the governmental arms of the state which give the property owner a right of redemption at any time before sale. (Pol. Code, secs. 3897a and 3897b.) But the statute under review is not made for irrigation districts alone; it provides for a cancellation where the property is owned by the state or any of its agencies and the ownership is of such a character that it may not be sold for delinquent taxes or assessments. Moreover, sections 47 and 48 of the irrigation law do not specifically declare that such title extinguishes the claim of all other agencies of the state. The rule of law that the state may not be thus precluded without specific provisions to that effect is well established. (Kubach v. McGuire, 199 Cal. 215; Inglewood v. County of Los Angeles, 207 Cal. 697.)

"These citations also dispose of the claim that under section 48 of the irrigation law the title to the district is 'free of all encumbrances' and thus the state is precluded. This position is clearly untenable."

III.

Should a Federal Court Disregard Evidence Which Might be Urged in a State Court Proceeding Involving the Validity of Assessments and a Subsequent Sale Thereunder?

The Circuit Court in its opinion takes the position that since the District Court Judge adopted the findings of the Commissioner-Referee, except the portion thereof reading as follows:

> "That the lands of the debtor were subjected to the assessments and alleged liens of the former irrigation district without any benefit whatsoever accruing to the debtor or the said lands of the debtor, and upon the dissolution of the said Irrigation District, the said debtor and the said lands were saddled with the alleged lien and assessment and penalties which were assigned to the petitioner, Fallbrook Public Utility District, without any consideration whatsoever passing to or being received by the debtor" [R. 172].

he was eliminating any consideration of the validity of the assessments on the score of not furnishing water to the land [R. 172].

Naturally, the Honorable Circuit Court has the right to place any construction on such a situation that it may choose; *however*, we take the position that since this entire matter is one that should be finally decided by the State Court and not by a Federal tribunal, the Circuit Court should have considered all the evidence, including that above referred to, *before reversing* the District Court's

decision and dismissing the property from the bankruptcy proceedings.

We urge this point because we feel it is clearly allied with point No. II (*supra*), and feel that the legal propositions and cases cited there are applicable in connection herewith. We respectfully ask the Court to consider point No. II and this point, No. III, together, bearing in mind also that the Circuit Court arrived at its opinion, to wit, *"on this date the Utility District became the absolute owner of the property"* [R. 174] on the theory that, *first*, the finding herein referred to was stricken from the District Court findings and thus eliminated the consideration of the validity of the assessment; and *second*, that the letter dated March 12, 1940, sent by the secretary of the Utility District to petitioner's husband [R. 170], being Petitioner's Exhibit "E" [R. 77], did not *extend the statutory right of redemption, but was merely* "an offer on the part of the Utility District" [R. 174].

This Honorable Court is well aware, after reading the record, *that the title to the real estate involved in this case is in a confused condition and will ultimately require adjudication by the State Court* as to the respective rights of the Utility District, your petitioner, and also the County of San Diego.

For years, the experience of the Bench and Bar has been that tax titles create litigation, and while certain phases of tax deeds and tax deed titles have been decided, *each case submitted to the local tribunal raises serious and novel questions that are not covered by local statutes.* We again respectfully refer to the statement made by Judge Jenney in *"In re American Fidelity Corporation,"* (*supra*).

IV.

Should the Utility District Be Permitted to Retain as Its Own, Property Appraised at $12,500.00, Which It Obtained Through Foreclosure of a Questionable Lien in the Sum of $1472.00, Which Lien It Received From Its Predecessor Under an Agreement to Take All of the Predecessor's Assets, Including the Land in Question for a Total Consideration of $1463.00.

It may be true that no element of fraud or mistake is present in the proceedings which led up to the foreclosure of the Utility District's lien; and it may also be true that the foreclosure of this property and the sale thereof for Fourteen Hundred and Seventy-two ($1472.00) Dollars, owed by the debtor, does not fall into the category of *"de minimis"* [R. 175], but with all due respect to the ruling of the Honorable Circuit Court of Appeals, we are not able to determine why the effect of these two facts should not be submitted *to the highest court of the State in which the land is located.*

We believe that this Honorable Court will take judicial notice of the fact that before the title to the land in question, in so far as the Utility District, your petitioner, or the County of San Diego and its successors in interest, can be finally cleared and determined, it is a certainty that State litigation must be carried on between these several interested parties; and that in such litigation, all matters pertaining to the levy of the assessment, as well as the foreclosure and subsequent sales, will be offered as evidence to the State Court and will be ruled upon in one way or another.

Irrespective of what may have gone on before in the litigation, which followed the adjudication in bankruptcy, your petitioner, in our opinion, in any State Court proceedings will be within her rights if she presents evidence of fraud, mistake, irregularities in levying of assessments and irregularities in foreclosure. The Court, no doubt, will also be interested in determining the basis of the foreclosed lien, and it will then be the proper time to ascertain and obtain a ruling as to whether or not the sale of property worth $12,500.00 for a lien of $1472.00 under the circumstances evidenced by the record is *"de minimis"* or not.

There would be no reason for the filing of this petition, or the taking of the time of this Honorable Court and its distinguished judges, if the laws and decisions of the State of California were such as to establish a precedent which could be considered a guide or a "beacon light". We, however, need not investigate the innumerable tax title cases in this State, or the public utility or irrigation district tax title cases, to determine that the cases above cited under heading No. II are sufficient to advise us that there is no *"final decision on the subject in this State"*. All of the cases above cited on the subject are recent decisions, and we also feel that the case of *Mangus v. Miller*, decided by this Honorable Court and reported in 317 U. S. 178, involves facts and circumstances similar to those involved in our situation and that there the Court ruled substantially in accordance with our argument in this petition.

We respectfully suggest that since this is a matter for State determination, based upon the laws and decisions now in effect in the locale of the property, that the entire matter should be ruled upon by the courts of this State exclusively.

In conclusion, it is further respectfully submitted that this Court should issue its WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: May 24th, 1943.

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CLERK

IN THE

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OCTOBER TERM, 1942

No. 72

MINA L. COWAN,

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vs.

FALLBROOK PUBLIC UTILITY DISTRICT, a Public Corporation,

Respondent.

REPLY BRIEF OF RESPONDENT IN ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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U. S. Supreme Court Rules, No. 38, paragraph 5 8

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. .....

MINA L. COWAN,

Petitioner,

vs.

FALLBROOK PUBLIC UTILITY DISTRICT, a Public Corporation,

Respondent.

REPLY BRIEF OF RESPONDENT IN ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable Supreme Court of the United States:

The respondent, the Fallbrook Public Utility District, a Public Corporation of the State of California, in answer to the petition for writ of certiorari heretofore filed by the petitioner, respectfully presents, for consideration, the following brief:

REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI.

The respondent respectfully asks this Honorable Court to deny the petition for the writ of certiorari for the following reasons:

I

The question presented to the Circuit Court of Appeals for the Ninth Circuit, and denied by such Court on December 20, 1942, has now become moot.

II.

There are no special and important reasons justifying the exercise of the jurisdictional discretion of this Honorable Court to review the questions presented by the petitioner.

III.

The decision of the Circuit Court of Appeals, sought to be reviewed, correctly determines the law of the case.

SUMMARY OF ARGUMENT.

I.

The issue sought to be determined by the petitioner in this matter has now become moot because, by action of the United States District Court for the Southern District of California, Central Division, in Bankruptcy, the lands, which were the subject of controversy in the Courts below, were, on January 12, 1943, dismissed from the bankruptcy proceedings and no appeal was taken from such decision within thirty days prescribed by Sections 47 and 48 of Title 11 of U. S. Code Ann., which authorizes an appeal from any final order in a proceeding in bankruptcy.

II.

There are no special or important reasons for issuing a writ of certiorari in this case. The question decided by the Circuit Court of Appeals was whether or not the petitioner

had a property interest in the real property involved which gave the bankruptcy courts jurisdiction over such property. The Circuit Court of Appeals decided that no such interest was held by the petitioner at the time of the filing of the petition in bankruptcy, and such decision of the Circuit Court of Appeals was decided in accordance with the law of the State of California as to property rights. No Federal question was determined; the decision of the Circuit Court of Appeals was not in conflict with other decisions of the Circuit Court of Appeals on the same matter; no question of local law was decided which could probably conflict with any other applicable local decision and the Circuit Court of Appeals did not, in any way, depart from the accepted and usual course of judicial proceedings and did not, of course, sanction any departure by the United States District Court in such manner as to call for an exercise of the Supreme Court's power of supervision.

III.

The decision of the Circuit Court of Appeals was correct in law because—

1. The petitioner had no property right in the land at the time of the filing of her petition in bankruptcy. Her right to redeem her property from the Irrigation District's sale for the nonpayment of delinquent taxes levied by the Irrigation District expired at the end of three years under the Irrigation District laws of California, and the Fallbrook Public Utility District did not grant to such petitioner any extension of the right of redemption. The interest of the petitioner in the land involved was thus divested, and title

to such land transferred to the respondent. Such transfer, of course, was made subject to any existing liens held by the State of California and County of San Diego by virtue of nonpayment of delinquent taxes levied by such public agencies on such land. There was no question of priority of tax liens, or parity of tax liens involved in such case, and, by the sale of the property by the Irrigation District tax proceedings to the respondent herein, the right to redeem from State and County tax liens passed from the petitioner to the respondent, and thereafter such right to redeem existed only in the respondent, and not in the petitioner. There was, therefore, no reason for determining, by the law of California, priorities between the two tax liens.

2. Under the state law of California, providing for the sale of lands by Irrigation Districts for the nonpayment of Irrigation District taxes at the end of three year period of redemption, the Irrigation District, or where the Irrigation District has been legally dissolved prior thereto, in such case the County Treasurer, may issue a deed to the purchaser or holder of the tax lien which deed vests title in the purchaser or holder of the tax lien and cuts off forever the interest of the former property owner, who allowed his property to go delinquent for the nonpayment of taxes. Such state law provides that the grantee of such deed becomes the absolute owner of the property so conveyed. There are no California cases holding contrary, but all of them hold such rule of law.

3. The Circuit Court of Appeals did not decide any question as to whether or not the right of a property owner to redeem from tax sales was not a valuable property right.

That question was conceded under the law of California. The real question decided was whether or not the bankrupt petitioner had not lost her right of redemption prior to the institution of the bankruptcy proceedings.

4. In bankruptcy proceedings, under the bankruptcy law of 1928, the Federal Courts have full and complete authority to decide property rights, except that such decisions must be made in accordance with the law of the state in which the property is situated.

5. The defenses which petitioner claims could be urged in the State Court, if this proceeding had been referred to the State Court, were all urged in the United States District Court and the Circuit Court of Appeals, and each one of them was considered adversely to petitioner. The decision of the Circuit Court of Appeals was correct as to these three defenses because such decision was determined on the findings of fact approved by the District Court; the defenses urged by petitioner were barred by conclusive judgment rendered in the State Court as to the legality of the Irrigation District assessment proceedings; the defenses claimed were barred by California statute of limitations; and finally the question of adequacy of consideration in tax irrigation district proceedings has been decided by the Supreme Court of the United States.

ARGUMENT.

I.

The question sought to be presented to the Supreme Court of the United States in this petition for writ of certiorari has become moot. As stated by petitioner on

page 2 of her petition and brief, no stay of mandate of the final decision of the Circuit Court of Appeals was applied for or granted. On January 12, 1943 on motion of the respondent, an order was entered in the District Court of the United States for the Southern District of California, Central Division, in the case of "In the Matter of Mina L. Cowan, Debtor, No. 35978-C Bkcy," dismissing the bankruptcy proceeding with respect to the lands formerly belonging to the petitioner, and setting aside the restraining order preventing the Fallbrook Public Utility District from selling such lands. This was a final order in a bankruptcy proceeding. No appeal was taken therefrom; hence the Federal Courts have lost jurisdiction over this particular land in such bankruptcy proceeding. The question, therefore, presented to the Supreme Court of the United States is moot and should not, therefore, be decided. (Copy of this final order in bankruptcy is printed in the appendix to this brief on page 12)

Mills vs. Green 159 U. S. 651, 40 Lawyers Ed. 293.

II.

No one is entitled to a writ of certiorari as a matter of right. The granting of a petition for such writ rests in the sound judicial discretion of the Supreme Court, and such writ will be granted only where there are special and important reasons therefor. The respondent respectfully presents that there are no special and important reasons why the Supreme Court should review the decision of the Circuit Court of Appeals in this case. The real issue in the court below was whether or not this petitioner had an interest

in the property, which she had scheduled in the bankruptcy proceedings as belonging to her, which gave to the bankruptcy court jurisdiction over such property. (R. 172 and 175.)

Whether or not the bankrupt petitioner had a legal interest in such property at the time of the institution of the bankruptcy proceedings depended upon the law of the State of California.

Hoyd vs. Citizens Bank of Albany (CCA Ohio 1937), 89 Federal (2d) 105;

U. S. National Bank of Omaha vs. Pamp (CCA Neb. 1936), 83 Federal (2d) 493.

If petitioner had no property interest under the law of California in this property the bankruptcy court had no jurisdiction over the same. That was the sole question before the lower courts. Such a question does not come within the category of the reasons described in the rules of the Supreme Court for the issuance of writs of certiorari. For example, the issue presented in the court below does not involve (a) a Federal question, (b) a decision of the Circuit Court of Appeals which is in conflict with another decision of another Circuit Court of Appeals, or a decided and important question of local law, probably in conflict with local decisions, or a decided and important question of general law, probably untenable or in conflict with the weight of authority, or a decided question of Federal law, or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the

District Court, as to call for an exercise of the power of supervision of the Supreme Court.

Rules of Supreme Court, No. 38, paragraph 5.

Of course, we appreciate that the Supreme Court is not necessarily controlled by the character of reasons set forth in its rules for the granting of writs of certiorari, but that it may grant such writ in the exercise of its discretion if it feels that the interests of justice demand that it do so, but we think it important to urge that the present case is not one which justifies the review because the question decided by the Circuit Court of Appeals was purely one of a local property rule which could not possibly be of interest to anyone in the United States except this petitioner. The question of whether or not she had lost the right to redeem her property from a tax sale, or whether or not such right of redemption had been revived or extended, could not possibly be of interest nationally or to the citizens and property owners of the other forty-seven states of the United States.

III.

1. The decision of the Circuit Court of Appeals was correct in law. In support of this conclusion we will answer the contentions of the petitioner commencing on Page 7 of her brief. The first of these (1a and b) is the argument that the petitioner had a property right in the property involved consisting of: (a) the right to redeem from the sale made by the County Treasurer to the respondent Utility District, and (b) from the sales theretofore made for the nonpay-

ment of State and County delinquent taxes. We answer this point as follows:

The respondent Utility District obtained title to this property by virtue of the granting of a deed by the County Treasurer of the County of San Diego to the Utility District. This deed was issued pursuant to the provisions of Section 47½ of the California Irrigation District Act (Appendix, Page 10) (R., Page 111) on November 9, 1939, more than four months before the institution of the bankruptcy proceedings.

The Fallbrook Irrigation District had been a public corporation, organized and existing many years prior to the year 1933 under the California statutes of 1897, Page 254, (Deering General Laws, Act 3854, Page 1792).

This Irrigation District was legally dissolved in 1938, pursuant to the terms and provisions of the California Irrigation District Dissolution Statute (California Statutes 1903, Page 3) (Appendix, Pages 5 to 8).

The respondent was at that time, and now is, a public corporation, organized under the California Statutes of 1913, Page 450.

A contract had been entered into by the former Irrigation District with the Fallbrook Public Utility District providing that, in the event of dissolution of the Irrigation District, all of its property and assets were to be transferred to the Utility District as a part of the plan of dissolution of said Irrigation District.

Among the assets to be transferred under this contract were certain certificates of sale owned by the Irrigation District for the nonpayment of delinquent taxes levied by

such District on the properties involved in this litigation (R., Pages 168, 169).

The statute authorizing the dissolution of this Irrigation District provided for the institution of a proceeding in the State Court of California in which, not only the legality of the dissolution proceedings was to be passed upon, but the Court was also given jurisdiction to pass upon the validity of all tax proceedings leading up to the issuance of certificates of sale, and the validity of the plan of dissolution, which included the contract between the Irrigation District and the Fallbrook Public Utility District (Sec. 4 California Irrigation District Dissolution Act, Pages 7, 8, Appendix).

This proceeding was had in the Superior Court of the County of San Diego and resulted in a decree in which the Court approved the dissolution proceedings, the plan including the contract between the Irrigation District and Utility District, and the validity of the tax proceedings of the Irrigation District leading up to the issuance of the certificates of sale. This decree further authorized the transfer of such certificates of sale to the Utility District, and authorized the County Treasurer of San Diego County to issue deeds to the Utility District upon demand, in the event that the property described in the certificates of sale was not redeemed within the period of three years allowed by the California Irrigation District Act (R., Pages 99 to 110).

The redemption right given by this California Irrigation District Act and the decree of the State Court was not exercised by the petitioner within the three years allowed and the Utility District obtained deeds from the County

Treasurer in accordance with that decree. These deeds were issued more than four months before the bankrupt petitioner instituted her bankruptcy proceedings. (R., Page 169).

On March 12, 1940 the Secretary of the Utility District dispatched a letter to H. Cowan, the debtor's husband, in which it was stated that the Utility Board of Directors had set March 22, 1940, as the date the real property, which is involved in this controversy, would be offered for sale if not redeemed therefor. (R., Page 170.)

The petitioner herein claims that this letter of March 12, 1940 extended and revived the right of redemption given by the California Irrigation District Act, and as the petitioner had filed her application, under Section 75s of the Bankruptcy Act (11 U. S. C. A. 203(s)), on March 20, 1940, there still remained two days in which she had the right to exercise the right of redemption allowed by the Board of Directors of the Utility District.

Petitioner claims that this right was a property right covered by the bankruptcy laws and, therefore, the Bankruptcy Court had jurisdiction over this property.

The Circuit Court of Appeals held that, under the California Irrigation District Act, the right of redemption expired three years after the issuance of the certificates of sale and that, because the debtor petitioner had not exercised this right of redemption within such three years, title to the property had passed, by virtue of the County Treasurer's deeds, to the Utility District, on November 9, 1939, and that this letter from the Utility District Secretary to the petitioner's husband did not revive or extend the right

of redemption. The Circuit Court of Appeals held that, at the most, this letter was simply an option which, not having been exercised within the time provided by the option, did not give to the debtor any property rights which were subject to the bankruptcy laws of the United States (R., Page 174).

We believe that the decision of the Circuit Court of Appeals is correct, first, because, the right of redemption having expired, it could not be revived or extended by any act of the Utility District. See

County of Los Angeles vs. Rochhold, 3 Cal. (2d) 192;

Angelo California National Bank vs. Leland, 9 Cal. (2d) 347.

That the letter was simply an option and did not give any right in property see

Hicks vs. Christianson, 174 Cal., 712, 164 Pac., 395;

Ware vs. Quigley, 176 Cal., 694, 169 Pac., 377;

Dougherty vs. Cal. Kettleman, 9 Cal. (2d) 58, 69 Pac. (2d) 155.

Petitioner argues, however, that, notwithstanding these facts, the petitioner bankrupt still had the right of redemption from certain State and County tax liens which existed against these properties at the time of the transfer of the title to the Utility District by the County Treasurer, and that such right of redemption, under the State and County tax law, was a property right within the meaning of the bankruptcy laws (petitioner's brief, page 11).

It is then argued that, as there existed State and County tax liens at the time of the Irrigation District delinquency tax sales, the issuance of the Treasurer's deed to the Utility District did not wipe out or merge into the Treasurer's deed such State and County tax liens. And, as these State and County tax liens had not been destroyed or wiped out by the Irrigation sale to the Utility District, the right of redemption given by the State law for the redemption from State and County delinquent tax sales still was vested and remained in the petitioner, and she still had this right of redemption as a property right on the date she filed her application in bankruptcy.

The principal case relied upon by petitioner to establish this conclusion is the case of *La Mesa Irrigation District vs. Hornbeck*, 216 Cal. 730 at pages 735 and 738. This case does hold that tax liens of Irrigation Districts are not prior liens to the extent that a sale made to the Irrigation District after the right of redemption had expired would not vest in the purchaser a title free from the State and County tax liens, and that the liens of taxing agencies, such as Irrigation Districts and Reclamation Districts, were on a parity with the liens for State and County taxes.

We do not quarrel with this decision, although it has been criticized repeatedly by subsequent decisions of the State Supreme Court to the extent that it may now be said to be overruled. See

Provident Land Corporation vs. Zumwalt, 12 Cal. (2d) 365;

El Camino Irrigation District vs. El Camino Land Corporation, 12 (2d) 378;

Clough vs. Compton Irrigation District, 12 Cal. (2d) 385;

Moody vs. Provident Irrigation District, 12 Cal. (2d) 389;

Anderson Cottonwood Irrigation District vs. Klukkert, 13 Cal. (2d) 191.

We believe the question of priority of tax liens or parity of tax liens does not exist in this case at all. We contend that the Treasurer's deeds of November 9, 1939 passed to the Utility District all of the interest formerly held by the debtor petitioner in such lands, and that the right of redemption, formerly vested in such petitioner, was transferred by said Treasurer's deed to the Utility District, so that the Utility District now has the right to redeem from such State and County tax sales.

We do not claim that the Treasurer's deeds wiped out these State and County tax liens, and are free to concede that the Treasurer's deed passed all of the title formerly had by the petitioner in these lands to the Utility District, subject to the existing State and County tax liens.

The California Irrigation District tax law, in Section 47, provides that, if the property of a delinquent Irrigation District taxpayer is not redeemed within three years, then a deed may be issued to the holder of the tax certificate of sale. If, however, the three year period of redemption has expired, and during such three year period the Irrigation District has been dissolved, then both the redemption of the property and the issuance of the deed, in the event of the failure to redeem, is governed by the provisions of Section

47½ of said Act. (Appendix Page 10.) A deed issued under either Section 47 or 47½ of such Irrigation District law has the effect of forever cutting off the former owner, both as to his right of redemption and any interest which he formerly had in the property. See

Quinn vs. Kenney, 47 Cal., 147;

Fox vs. Wright, 152 Cal., 59;

Chapman vs. Zobelein, 19 Cal. App., 132;

Schamblin vs. Means, 6 Cal. App., 261;

Adams vs. Slee, 92 Cal. App., 708;

Provident Land Corporation vs. Zumwalt, 12 Cal. (2d) 365.

The *Chapman vs. Zobelein* case, above cited, was taken to the Supreme Court of the United States where it is reported in 237 U. S., 135; 59 Lawyers Edition, 874.

The State and County tax liens, which are mentioned by the petitioner in this case (page 9, petitioner's brief), existed at the time of the original issuance of the tax certificate of sale (R., 171). The record will show that this was as early as 1931. At that time the right of redemption given by the State law for State and County taxes was governed by Section 3780 of the Political Code of California which then read:

> "A redemption of the property sold may be made by the owner or any party in interest within five years from the date of the sale to the state, or at any time prior to the entry and sale of said land by the state, in the manner provided by Section 3817."

Section 3817 then read:

> "In all cases where real estate has been sold or may hereafter be sold for delinquent taxes to the state, and the state has not disposed of the same, the person whose estate has been, or may hereafter be sold, his heirs, executors, administrators or other successors in interest, shall, at any time after the same has been sold to the state, and before the state shall have disposed of the same, have the right to redeem such real estate by paying to the County Treasurer of the County wherein the real estate may be situated the amount of taxes, penalties and costs due thereon at the time of said sale * * *"

It is clear from a perusal of these two Sections of the Political Code that the right of redemption authorized by the State law is now vested, or was on November 9, 1939 vested, in the respondent Utility District, and not in the petitioner. The right of redemption then authorized by the State law of California did not give to the petitioner any property interest in this property on the date she went into bankruptcy, to-wit, March 20, 1940.

2. The decision of the Circuit Court of Appeals that the Utility District became the absolute owner of the property is justified by the California decisions hereinabove cited as to the effect of the delivery of a deed after the right of redemption has expired.

Quinn vs. Kenney, 47 Cal., 147;

Fox vs. Wright, 152 Cal., 59;

Provident Land Corporation vs. Zumwalt, 12 Cal. (2d) 365;

Chapman vs. Zobelein, 19 Cal. App., 132;

Schamblin vs. Means, 6 Cal. App., 261;
Laist vs. Nichols, 139 Cal. App., 202.

Examination of these authorities will show that the Circuit Court of Appeals of the Ninth Circuit was correct in its decision that on November 9, 1939 the Fallbrook Public Utility District became the absolute owner of the property, and there are no decisions that we have been able to find that hold otherwise.

3. There is no necessity for the Supreme Court of the United States to pass upon the question of whether or not the right of redemption given to the owner of land by the tax laws of the State of California is, or is not, a valuable property right protected by the bankruptcy laws of the United States. We concede that the right of redemption under the California tax laws is a valuable property right, and we also concede that such property right may be administered by the bankruptcy court in bankruptcy proceedings. We do, however, insist that the petitioner herein had no property right consisting of a right to redeem from any tax liens for either Irrigation District taxes or State and County taxes at the time that she filed her application in bankruptcy.

4. The petitioner's fourth point or reason urged as to why a writ of certiorari should issue in this case is:

> "The lower court should have referred the question of tax title ownership to the State Court for decision. It should not have dismissed the proceedings as to the property involved."

We do not agree with this contention at all. In our opinion

the bankruptcy laws of the United States vest in the bankruptcy court exclusive jurisdiction to determine every question which might relate to the administration of the affairs and properties of a bankrupt, including the jurisdiction to try title to property.

11 U. S. Code Ann., Section 11, Subdivision 6;

Pepper vs. Litton, 308 U. S., 295; 84 Lawyers Edition 281.

5. The petitioner makes the point that the entire question of title to this land should have been referred by the Bankruptcy Court to the State Court for decision and that, if such reference had been made, the petitioner would have, and will, present to such State Court three defenses, which would consist of the contention that the original Irrigation District levies were fraudulent, improper and illegal; that the sale of such property for such alleged illegal assessments was a shock to the conscience of the Court, and that the letter of the Secretary of the Fallbrook Public Utility District referred to as Exhibit "E" (R., 77) was a grant of an extension of time within which to pay such delinquent Irrigation District tax assessments. We answer this by pointing out:

First. That each of these defenses was urged and presented to the United States District Court and reviewed by the Circuit Court of Appeals. The United States District Court, which had authority to pass upon the sufficiency of the evidence to sustain the findings of the Conciliation Commissioner, refused to approve a finding that might have indicated a question of illegality in the levying of the original Irrigation District assessments. Accordingly, no such

finding was presented for consideration to the Circuit Court of Appeals. The United States District Court's findings of fact are conclusive (Sec. 67, Title 11 U. S. Code Ann.). There was no charge of fraud and no evidence of fraud in the record.

However, the contention was made that, because the District paid a cash consideration of but $1,463.00 for all of the property of the dissolved Irrigation District, it should not be allowed to redeem petitioner's property, which was appraised at $12,500.00 and that it was shocking to the conscience that the petitioner should be deprived of her property, worth $12,500.00, for the nonpayment of a tax lien which amounted originally to the sum of $1,472.00.

The question of consideration paid by the Utility District under the dissolution proceeding was of no legal interest to the petitioner because at that time she still had the right to redeem her property under the Irrigation District tax law by simply paying the taxes due. This she failed to do.

Second. Besides, the record shows (R., 99, Petitioner's Exhibit "2") that in a proceeding directly authorized by the Statutes of California (Dissolution of Irrigation Districts, California Statutes 1903, page 3, Appendix Page 5), which was contested, and at which petitioner had an opportunity to be heard after notice, the Superior Court of the County of San Diego passed upon the validity of the tax proceedings leading up to the issuance of the certificate of sale and determined that all of such tax proceedings were valid. We contend that this judgment is conclusive on the petitioner and the world, and that she should

not now be allowed to be heard on that question in any Court.

Happy Valley Water Company vs. Thornton, 1 Cal. (2d) 365;

Price vs. Sixth District Agricultural Assn., 201 Cal. 502;

Sacramento M. U. District vs. All Parties etc., 6 Cal. (2d) 197;

Barrow vs. Santa Monica Supply Company, 9 Cal. (2d) 601.

Third. In addition to that the California Irrigation District Statute (California Statutes 1897, page 254, as amended to date; Appendix Page 8), in Section 68, 69, 71 and 72, provides a statute of limitation of six months within which any taxpayer of an Irrigation District may contest the legality of any tax assessment levied by a Board of Directors, and the Supreme Court of the State of California, in the case of *Miller & Lux, Inc. vs. Secara*, 193 Cal., 755, has held that such statute is constitutional and valid.

The remedy of a taxpayer of an irrigation district for relief from undue burdens imposed by assessments levied by boards of directors of irrigation districts, says the Supreme Court of California in the case of *Wores vs. Imperial Irrigation District* (1924, 193 Cal., 609, on page 632) is that he effect a change in the directory of the district by the means provided in the California Irrigation District Act relative to the selection of those who are from time to time entrusted with the conduct of the affairs of the district.

Fourth. The argument that the Utility District should not be allowed to retain this land as a result of the foreclosure of an irrigation tax lien in the sum of $1,472.00 when the value of the property itself is some $12,500.00, raises a question which has been presented to the Supreme Court of the United States in the case of *Chapman vs. Zobelein* above cited (237 U. S., 135; 59 Lawyers Edition, 874). On page 877 of the Lawyers Edition the Supreme Court said:

> "The plaintiff relies upon *Slater vs. Maxwell*, 6 Wall. 268, 18 L. Ed. 796, and other like cases, in which sales under an excessive levy were held to be void. But those decisions are not applicable here, not only because an issue as to the invalidity of a levy merely because excessive does not raise a Federal question, but because the statute here, by giving a five-year period of redemption, was intended in part to afford the taxpayer an opportunity to protect himself against the sale of valuable property, for an insignificant sum. The statute, in providing that the state should buy in the property and hold it subject to redemption for five years, intended to furnish relief to those who, for want of ability to pay, or for want of notice of the levy, might otherwise be deprived of their property by an ordinary tax sale. Whatever the character of the title which the state acquired at the first sale whether legal or equitable —it was in any event defeasible by redemption within five years."

CONCLUSION

The Fallbrook Public Utility District, respondent herein, believes that the foregoing reasons are sufficient to show that this is not a case in which the Supreme Court of the United States should authorize the issuance of a writ of

certiorari. We, therefore, respectfully request that the petition for such writ be denied.

ALBERT J. LEE,
Counsel for Petitioner.

LINDLEY & HIGGINS,
SHELLEY J. HIGGINS,
Of Counsel.

APPENDIX

BANKRUPTCY ACT OF 1938

Title 11, U.S.C.A., Bankruptcy

Sec. 47-a.

"The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several Courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either in interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: * * * "

Sec. 47-b.

"Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal."

Sec. 48-a.

"Appeals under this Act to the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment, order or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry."

Sec. 67-c.

"A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such

extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest."

Sec. 203-n.

"The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legisla-

tive enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of the court."

Sec. 203-o.

"Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section and prior to the confirmation or other disposition of the composition or extension proposal by the court:

(1) Proceedings for any demand, debt, or account, including any money demand;

(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

(3) Proceedings to acquire title to land by virtue of any tax sale;

(4) Proceedings by way of execution, attachment, or garnishment;

(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage."

Sec. 203-s.

"Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: Provided, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by

the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession."

DISSOLUTION OF IRRIGATION DISTRICTS

California Statutes, 1903, page 3.

Sec. 1.

"Any irrigation district * * * may be dissolved in the manner hereinafter provided; * * * "

Sec. 2.

"A majority in number of the holders of title, or evidence of title, to real property in any irrigation district and a majority in value of said property according to the equalized assessment roll of said district for the year last preceding upon which any assessment has been made, may propose the dissolution of said district

by a petition signed by such majority, which petition shall set forth the amount of the outstanding bonds, coupons, and other indebtedness, if such there be, together with a general description of the same, and the holders, so far as known, showing the amount of each description of indebtedness and the ownership, so far as known, of the same. Also the estimated cost of the dissolution of said district. Said petition shall also state the assets of said district, including irrigation system, if any, dams, reservoirs, canals, franchises, water rights, a detailed statement of all the lands sold to the district for assessments, and the amount of the assessments on each parcel of land sold, also all assessments unpaid, and the amount upon each lot or tract of land, and all other assets of the district; and in case any proposition has been made by the holders of said indebtedness to settle the same, said proposition, together with any plan proposed to carry the same into execution, shall be included in said petition."

Sec. 3.

"Upon the filing of said petition with the board of directors of said district said board shall call a special election, at which shall be submitted to the electors of such district the question whether or not said district shall be dissolved, its indebtedness liquidated, and its assets distributed in accordance with the plan so proposed, or in case no plan has been proposed, then in accordance with a plan which shall be proposed by said board of directors in the notice of the election, but no such election shall be called until the assent of all the known holders of valid indebtedness against the district shall be obtained or provision shall be made in said plan for the payment of such nonassenting holders. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors is re-

quired to be kept, once a week for at least three successive weeks before such election. Such notices must specify the time of holding the election, the fact that it is proposed to dissolve the district, and a brief summary of the plan proposed for liquidating its indebtedness and disposing of its assets. Said election shall be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions governing the election of officers in irrigation districts. At such election the ballot shall contain the words 'Dissolution of the district—Yes,' or 'Dissolution of the district—No,' or words equivalent thereto."

Sec. 4.

"In case upon such canvass it is found and declared by said board of directors that two-thirds of the votes cast at such election shall be cast in favor of 'Dissolution of the district—Yes,' then the said board of directors shall file a petition in the superior court of the county wherein is located the office of such board to determine the validity of the proceedings had and of the proposed plan for the dissolution of said district. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of a notice of the pendency of the proceeding for at least once a week for three weeks in some paper of general circulation published in the county where the action is pending; provided, that if the property of the district is situate in more than one county then the publication shall be made in one paper in each county wherein the same is situate, such paper or papers to be designated by the court having jurisdiction of the proceeding; jurisdiction shall be complete in thirty days after the completion of such notice in the manner herein provided. Anyone interested may at any time before the expiration of said thirty days appear and contest the validity of the proceedings already had and of the plan proposed for the dissolution of said district, or

any portion thereof, including the validity of any portion of the indebtedness set out in said petition, and the court may determine the validity of any sales for assessments, and may determine the amount of any assessment or assessments due upon the various parcels and lots of real estate within said district, and may determine the amount of any assessment or assessments, theretofore paid upon the various parcels and lots of real estate therein, and may in said proceeding adjust and determine the rights and liabilities of all parties. Such action shall be speedily tried and judgment rendered. Either party shall have the right to appeal at any time within thirty days after the entering of such judgment, and the appeal must be heard and determined within three months after the taking of such appeal."

CALIFORNIA IRRIGATION DISTRICT ACT

(Statutes, 1897, P. 254, as amended to date)

Sec. 39.

"The board of directors shall then, within fifteen days after the close of its session as a board of equalization, levy an assessment upon the lands within the district in an amount sufficient to raise * * * * to pay in full all sums due or that will become due from the district before the close of the next ensuing calendar year on account of rentals or charges for lands, water, water rights, or other property acquired by said district under lease or contract; also sufficient to pay in full all sums due or that will become due from the district, before the close of the next ensuing calendar year on account of contracts entered into by the district for power or fuel used or to be used for the pumping of water for the irrigation of land within the district, * * * * also sufficient to pay in full the amount of all unpaid warrants of the district issued in accordance

with this act and the amount of any other contracts or obligations of the district which have been reduced to judgment; * * * * also sufficient to raise such amount not exceeding two percentum of the aggregate value of the lands within the district according to the latest duly equalized assessment roll thereof, as the board of directors shall determine may be needed to be raised by assessment for any of the purposes of this act. * * *"

Sec. 47.

"A redemption of the property sold may be made within three (3) years from the date of sale, or at any time thereafter before a deed has been made and delivered by payment in lawful money of the United States to the collector of the district of the amount for which the property was sold plus a penalty of three-fourths (¾) of 1 per cent per month from the date of sale until redemption. * * * * If the property is not redeemed within the time herein provided, the collector or his successor in office, upon demand, must make to the purchaser, or his assignee, holding the certificate of sale, a deed to the property, which deed shall refer to the date of the sale and state that no person redeemed the property during the time allowed by law for its redemption. * * * * Where property has been sold to the district and a deed for it has been given to the district as the purchaser, such district shall have the same rights thereto, and to the rents, issues and profits thereof, as a private purchaser. The district may also sell, convey, lease, give and also take options upon, and issue and take contracts of sale upon and otherwise deal with such property including sale of the same to a former owner or holder of said property, on such terms and at such price as may be approved by the board of directors. Instruments to accomplish the same shall be executed and acknowledged by the president and secretary of the board of directors. (Amended, Stats. 1939, p. 1576.)"

Sec. 47½.

"The period herein prescribed for the redemption of properties sold for delinquent assessments shall not operate as a bar to the dissolution of any irrigation district. If any land has been sold for delinquent assessments of a district in process of dissolution, or in a district which has been dissolved, and the time allowed for redemption has not expired, the owner of such property or anyone in interest may redeem the same by paying the amount due thereon, computed as provided in section 46 of this act, to the county treasurer, who must issue his receipt therefor, and upon the presentation of such receipt the county recorder must cancel the certificate of sale in the manner required in the preceding section. In the event any land has been sold for nonpayment of assessments as herein provided, and no redemption has been made within the time allowed in this act therefor, in any district which may have been dissolved before the expiration of said redemption period, then a deed for the property sold and described in the certificate of sale must be made to the purchaser upon demand by the county treasurer of the county in which said irrigation district is or was situated. Such deed shall contain all the recitals of the certificate of sale, and in addition thereto, a recital that the district has been dissolved, and a deed executed in pursuance of the authority given in this section. A deed so executed shall have the same force and effect as if executed by the collector of an irrigation district. (Amended Stats. 1927, p. 191)."

Sec. 68.

"The board of directors may, at any time after the issue of any bonds or the levy of any assessment herein provided for, bring an action in the superior court of the county wherein is located the office of such board, to determine the validity of any such bonds or such levy of assessments; * * * *"

Sec. 69.

"If no such proceedings shall have been brought by the board of directors, then, at any time within thirty days after the levy of any assessment or issue of any bonds under the provisions of this act, any district assessment payer may bring an action in the superior court of the County where the office of the board of directors is located to determine the validity of any such assessment or such bonds, * * * "

Sec. 71.

"The court hearing any of the contests herein provided for, in inquiring into the regularity, legality or correctness of such proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure, which are not inconsistent with the provisions of this act, are applicable to all actions or proceedings herein provided for."

Sec. 72.

"No contest of any thing or matter herein provided shall be made other than within the time and manner herein specified, and in any such action all findings of facts or conclusions of said board of directors, or of the board of supervisors upon all matters, shall be conclusive, unless such action was instituted within six months after such finding or conclusion was made. (Amended Stats. 1915, p. 1370)."

In the District Court of the United States for the Southern District of California Central Division

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Filed Jan. 12, 1943.
Edmund L. Smith, Clerk,
By Francis E. Cross, Deputy Clerk.
No. 35978-C Bkcy.

In the Matter of MINA L. COWAN, Debtor.

Order and Decree Dismissing Bankruptcy Proceedings with Respect to Certain Lands and Setting Aside the Order Restraining the Fallbrook Public Utility District from Proceeding with the Sale of said Certain Lands.

Pursuant to the mandate of the United States Circuit Court of Appeals for the Ninth Circuit issued on January 6, 1943, in the case of Fallbrook Public Utility District, a public corporation, Appellant, vs. Mina L. Cowan, and County of San Diego, Appellees, No. 10153, and on motion of Lindley & Higgins, attorneys for the Appellant, Fallbrook Public Utility District, a public corporation, petitioner herein, It is Hereby Ordered, Adjudged and Decreed as follows:

I.

That the bankruptcy proceedings entitled "In the Matter of Mina L. Cowan, Debtor, No. 35978-C Bkcy." now pending in this Court with respect to the lands hereinafter de-

scribed be, and the same are hereby, dismissed. The lands affected by this decree are hereby described as follows:

All that certain real property situated in the County of San Diego, State of California, more particularly described as follows:

PARCEL 1:

North Half and West Half of South Half of Lot 11, Subdivision of Tract "D" of Rancho Monserate, in the County of San Diego, State of California, according to Map No. 821, filed in the office of the County Recorder of San Diego County, September 25, 1896.

PARCEL 2:

All of Lot 12, Subdivision of Tract "D" of Rancho Monserate, above described, EXCEPTING therefrom the East 20 feet for road purposes.

PARCEL 3:

All that portion of Lot 19, Subdivision of Tract "D" of Rancho Monserate, described as follows:
Commencing at Southeast corner of said Lot; thence North 89° 38′ 12″ West along the South line of said Lot, 713.24 ft.; thence North 0° 9′ 14″ West 1322.25 ft. to a point in North line of said Lot; thence South 89° 38′ 12″ East along said North line, 713.24 ft. to Northeast corner of said Lot; thence South 0° 9′ 14″ East, 1322.25 ft. to point of commencement; EXCEPTING therefrom the East 20 feet and South 20 feet reserved for roads.

PARCEL 4:

West Half of Lot 25, Subdivision of Tract "D" of Rancho Monserate, EXCEPTING therefrom the East 20 feet and North 20 feet thereof for road purposes.

PARCEL 5:

All that portion of Lot 23, Subdivision of Tract "D" described as follows:

Commencing at Southwest corner of East Half of said Lot; thence Northerly a distance of 849.06 feet to a 2-inch iron stake; thence Easterly a distance of 760.96 feet to a point in the East line of said Lot 23, distant Southerly 495 feet from Northeast corner of said Lot; thence South along East line of said Lot to the Southeast corner thereof; thence West 760.96 feet to point of commencement; EXCEPTING therefrom the South 4 acres of West 10 acres of East Half of said Lot 23 conveyed to Mary Scully by Ada Scott Morton and husband, by deed dated June 15, 1916, and recorded in Book 710, Page 160 of Deeds.

PARCEL 6:

All that portion of Lot 24 of said Subdivision, described as follows:

Commencing at Southwest corner of said Lot; thence South 89° 38′ 12″ East along South line of said Lot, 781.50 feet to a point; thence North 0° 9′ 14″ West, 1344.07 feet, more or less, to a point in North line of said Lot; thence North 89° 38′ 12″ West along said North line, 781.51 feet to Northwest corner of said Lot; thence South 0° 9′ 16″ East along West line of said Lot, 1344.07 feet, more or less, to point of commencement; EXCEPTING therefrom the North 495 feet.

II.

The restraining order heretofore issued on March 20, 1940, directed to the County of San Diego of the State of California, its officers, attorneys, servants, employees, or anyone acting for, through or under said County, and to the Fallbrook Public Utility District, its officers, directors, at-

torneys, servants, employees, or anyone acting under, through or by its direction, enjoining and restraining said parties named from selling or attempting to sell, under and by virtue of excution or other process, any of the property of the debtor named, to-wit, Mina L. Cowan, described in this decree be, and the same is hereby, set aside, vacated and dissolved.

Done in Open Court this 12th day of January, 1943.

PAUL J. McCORMICK,
Judge of the District Court
of the United States.

A true copy,
Attest, etc.

Edmund L. Smith, Clerk U. S. District Court,
Southern District of California.
By Francis E. Cross, Deputy.

Jan. 12, 1943.
(Seal of Court.)